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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,846	02/18/2004	Shaun Thomas Broering	9527L	2517

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The Procter & Gamble Company
Intellectual Property Division
Winton Hill Technical Center-Box 161
3110 Center Hill Avenue
Cincinnati, OH 45224

EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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09/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/780,846	Applicant(s) BROERING ET AL.	
	Examiner /Jeff H. Aftergut/	Art Unit 1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3, 12-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bustin (UK 1301198) in view of Meyer et al (US 6,394,652) optionally further taken with either one of Buchman et al or Bohn et al for the same reasons as expressed in paragraph 2 of the Office action dated April 7, 2008.
3. Claims 2, 4, 10, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with Cronauer for the same reasons as expressed in paragraph 3 of the Office action dated April 7, 2008.
4. Claims 2, 4-9, 10, 11, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as set forth above in paragraph 2 further taken with any one of Rowe et al, La Fleur et al or Yisha et al or in view of the collective teachings of Hiramoto et al, Henaus, Adelman and Muller for the same reasons as expressed in the Office action dated April 7, 2008, paragraph 4.

Response to Arguments

5. Applicant's arguments filed July 7, 2008 have been fully considered but they are not persuasive.

The applicant argues regarding the prima facie case that one skilled in the art would not have found the use of an overfolded sheet material in the form of a c-folded

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sheet or a flattened tubular member in the alternative in the manufacturing processing defined by Bustin as the reference only suggested that one practice the invention described therein with a flattened tube and the dynamics of separating a tube of material which completely encloses local areas and that of handling a c-folded sheet material are totally different. While the dynamics of separating a tube of material and separating a folded over sheet of material may be different, there is no reason to believe that one skilled in the art would not have been motivated to process either an overfolded sheet of material in the form of a c-fold or a flattened tube (which had an overlapped portion onto itself) in the manner claimed followed by a disengaging step. In fact, in bag manufacture (which the reference to Bustin is concerned with), one would have known to manufacture the bag from either an overfolded sheet of plastic sealable material or a tube which was flattened to provide an overlapping region therein (that these were alternative supplied of the material for the processing which must later transpire to make a bag from the material supply). The artisan would have been expected to emboss the sheet material in either form (as the reference to Meyer suggested) which imparted the claimed strain upon the material. The reference to Bustin clearly teaches disengaging the material subsequent to the inducing of the strain therein when processing a flattened tube of the material. One would have been expected to process the overfolded (c-folded) sheet material in a like manner and thus, processing to disengage the pleat elements would have been performed. The fact that the dynamics of the material differ does not render the claimed invention unobvious. In fact, one would have reasonably been expected to disengage the pleat elements and additionally would have been

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expected to understand how to perform such a disengaging step with reasonable success. It should be noted that those skilled in the art are presumed to have the skill level to modify the disengaging means provided by Bustin to act upon the c-folded sheet materials as those skilled in the art would recognize that other modifications were needed to accommodate the modification and that the phosita (person of ordinary skill in the art) would have been expected to have sufficient basic knowledge to construct such means, In re Bode et al, 193 USPQ 12. The question to be answered here is would one have reasonably been expected to provide for disengaging the c-folded material in a like manner to the disengaging of the flattened tube subsequent to the straining operation and if so would one have had the skill level to understand how to modify if necessary the disengaging means of Bustin to accommodate the c-folded sheet. One clearly would have desired to disengage the c-folded sheet in light of the prior art and there is simply no reason to believe (even if the dynamics of the material are different) that one skilled in the art would not have known how to disengage the c-folded sheet and make any necessary modifications to the disengaging means of Bustin to act upon the c-folded sheet material. Applicant is advised that obviousness is not based upon absolute predictability but rather upon whether or not there is a reasonable expectation of success when making the identified modifications, see In re O'Farrell, 7 USPQ 2nd 1673. Here one reasonably would have expected success when using a c-folded sheet material for the flattened tube and one would have understood that either was suitable as a starting stock material for manufacture of a bag in light of the prior art of record.

The applicant is advised that while Bustin does not anticipate the claimed invention, the combination of references when read as a whole would have suggested performing the claimed operation. One cannot show non-obviousness by attacking references individually where combinations of references have been applied. Here, one viewing the prior art as a whole would have performed the claimed operation to form a strainable network in a c-folded sheet material and subsequently disengage the pleat elements using a disengaging means.

No claims are allowed.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:30-4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on 571-272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeff H. Aftergut/
Primary Examiner
Art Unit 1791

JHA
September 16, 2008